

# OSLO PRINCIPLES ON GLOBAL CLIMATE CHANGE OBLIGATIONS

On March 1, 2015, a group of experts in international law, human rights law, environmental law, and other law adopted the Oslo Principles on Global Obligations to Reduce Climate Change.

The experts came from universities, national and international courts, and organizations located in every region of the world.

Based on extensive legal research and discussions over a period of several years, which culminated in a meeting in Oslo, Norway, in 2014, the undersigned experts adopted the following principles:

## PREAMBLE

Climate change threatens the well-being of the Earth. The threats are grave and imminent. Indeed, climate change has already begun to harm human communities and the environment. As a group of legal experts concerned about global climate change and its disastrous effects on the planet and on life, we have come together to identify and articulate a set of Principles that comprise the essential obligations States and enterprises have to avert the critical level of global warming.

These Principles, seeking to overcome the generally abstract nature of previous efforts to define the scope of legal obligations relevant to climate change, express both

- 1) the current obligations that all States and enterprises have to defend and protect the Earth's climate and, thus, its biosphere; and
- 2) basic means of meeting those obligations.

Fulfilling these obligations is necessary and urgent if we are to avoid an unprecedented catastrophe. The obligations set out here derive from broad fundamental principles and a wide range of well-established law.

The biosphere, all forms of life within it and the ecological processes that maintain all living organisms are part of the common heritage of humanity. Human beings, because of their unique nature and capacities, have an essential duty as guardians and trustees of the Earth to preserve, protect and sustain the biosphere and the full diversity of life within it.

Avoiding severe global catastrophe is a moral and legal imperative. To the extent that human activity endangers the biosphere, particularly through the effects of human activity on the global climate, all States and enterprises have an immediate moral and legal duty to prevent the deleterious effects of climate change. While all people, individually and through all the varieties of associations that they form, share the moral duty to avert climate change, the critical legal responsibility rests with States and enterprises.

According to the view of the overwhelming majority of leading scientists and other experts, climate change poses serious risks to both present and future generations of humankind, to other living species and to the biosphere. Climate change further endangers social and

economic progress, international peace and security, and equity and justice among human beings and States. Communities and segments of the population already in the most vulnerable circumstances will tend to suffer the effects of climate change most acutely.

Prevailing international scientific opinion recognizes that a two-degree Celsius increase in the Earth's mean global surface temperature over the pre-industrial level will have a profound, adverse and irreversible impact on human and other life and on the Earth. The even greater increase toward which the climate is currently moving would cause significantly greater damage. Human activity is already causing grave and potentially catastrophic changes in the climate. The rate of global climate change is widely understood to put humanity at a tipping point that requires urgent action to avert disaster. While a small minority of opinion is critical of the consensus, the power of prevailing scientific opinion requires action as set forth in these Principles.

All principles, laws, policies and practices, whether local, national or international, that may affect the environment and, in particular, the global climate must be based on scientific evidence. As this evidence is constantly evolving and improving, lawmakers, policymakers and tribunals have a duty to inform themselves of and base their actions – in good faith and respecting justice and equity – on prevailing scientific knowledge and opinion. If necessary, in order to respect the Precautionary Principle (Principle 1 below), such decision makers must take into account, and take action to avoid, any credible and realistic worst-case scenario accepted by a substantial number of eminent climate change experts.

International law entails obligations to act cooperatively to protect and advance fundamental human rights, including in the context of climate change and its effects on people's ability to exercise such rights. Threatened human rights include, but are not limited to, the right to life, the rights to health, water, food, a clean environment, and other social, economic and cultural rights, and the rights of children, women, minorities and indigenous peoples.

International law recognises that each State is legally responsible for the deleterious trans-border effects that human activities in its territory have on other States.

The grave and universal nature of climate change's threat to the Earth affirms the basic principle of human solidarity and requires all States and individuals to act, in regard to decisions affecting the climate, with urgency and respect for justice and equity and to negotiate in good faith to achieve agreements that, taken together, would prevent the critical two-degree Celsius increase in global temperature.

If global emissions contributing to climate change continue to increase, or if the required reductions, as set out in these Principles, fail to prevent a two-degree Celsius temperature increase, States and enterprises must reduce their emissions further.

These Principles set out the legal obligations of States and enterprises to take the urgent measures necessary to avert climate change and its catastrophic effects. They do not claim to address all action that humanity will need to take to respond to the dangers climate change poses to human life and the biosphere. Additional crucial initiatives include:

- action by international, national and local actors to adapt to inevitable climate-change effects in ways that minimize harm to human and other forms of life and to the exercise of human rights;

- transparency in the conduct of all actors with responsibility to implement these Principles;
- widespread education initiatives to ensure that humanity, in general, and all people making relevant decisions, including legislative and judicial decisions, understand the urgency of action to avert climate change; and
- guarantees of public access to information about the climate effects of policies, projects and practices, public participation in relevant decision-making, and the establishment of appropriate institutions to coordinate and implement efforts to reduce climate change.

No single source of law alone requires States and enterprises to fulfil these Principles. Rather, a network of intersecting sources provides States and enterprises with obligations to respond urgently and effectively to climate change in a manner that respects, protects, and fulfils the basic dignity and human rights of the world's people and the safety and integrity of the biosphere. These sources are local, national, regional, and international and derive from diverse substantive canons, including, *inter alia*, international human rights law, environmental law and tort law.

Under well-established principles of international law, States are entitled to a degree of discretion in the means they choose to fulfil their obligations under these Principles.

## I. GENERAL PRINCIPLE

**1. Precautionary Principle:** There is clear and convincing evidence that the greenhouse gas (GHG) emissions produced by human activity are causing significant changes to the climate and that these changes pose grave risks of irreversible harm to humanity, including present and future generations, to the environment, including other living species and the entire natural habitat, and to the global economy.

- a. The Precautionary Principle requires that:
  - 1) GHG emissions be reduced to the extent and at a pace necessary to protect against the threats of climate change that can still be avoided; and
  - 2) the level of reductions of GHG emissions required to achieve this, should be based on any credible and realistic worst-case scenario accepted by a substantial number of eminent climate change experts.
- b. The measures required by the Precautionary Principle should be adopted without regard to the cost, unless that cost is completely disproportionate to the reduction in emissions that will be brought about by expending it.

## II. DEFINITIONS

**2. Least developed countries:** Countries that qualify as least developed, as defined and classified by the United Nations Committee on Development Policy.

**3. Permissible quantum of GHG emissions:** Maximum amount of total global GHG emissions per capita in a given year, calculated on a global basis, that, based on Principle 1.a, may be allowed consistent with a plan of steady emissions reductions to ensure that the total

global average surface temperature increase ultimately caused by GHG emissions never exceeds pre-industrial temperatures by more than 2 degrees Celsius.

4. **Above- or below-permissible-quantum country:** A country that, in a specific year, has GHG emissions per capita that, respectively, exceed or fall below the permissible annual quantum.

5. **Reduction of GHG:** For the purpose of these Principles and Obligations, reduction of GHG emissions includes measures to reduce GHG already in the atmosphere as well as to reduce GHG emissions.

### III. SPECIFIC OBLIGATIONS

#### A. Obligations of States and Enterprises

6. States and enterprises must take measures, based on Principle 1, to ensure that the global average surface temperature increase never exceeds pre-industrial temperature by more than 2 degrees Celsius.

- a. The extent of the measures legally required must be determined in light of the Precautionary Principle, defined in Principle 1.
- b. The permissible quantum of GHG emissions that a State or enterprise may produce in a specific year must be determined in accordance with this Principle.

7. All States and enterprises must reduce their GHG emissions to the extent that they can achieve such reduction without relevant additional cost. Relevant measures include switching off power-consuming equipment when not in use; eliminating excessive power consumption where possible, including for heating, cooling and lighting; promoting, to the maximum extent possible, measures that will reduce the need for consuming energy, such as improved insulation of buildings and improved efficiency of energy-consuming devices; elimination of broad fossil-fuel subsidies, including tax exemptions for certain industries, such as air transportation.

8. States and enterprises must refrain from starting new activities that cause excessive GHG emissions, including, for example, erecting or expanding coal-fired power plants, without taking countervailing measures, unless the relevant activities can be shown to be indispensable in light of prevailing circumstances, as might be the case, in particular, in the least developed countries. If the new activities are shown to be indispensable, a least developed country is obligated to opt for less GHG-emitting new activities only if and to the extent that developed countries or other entities provide the relevant least developed country with the additional means to meet this obligation.

9. Developed and developing countries, as well as enterprises, must take available GHG-reduction measures that entail costs if the costs will be offset through future savings or financial gains. Least developed countries and local enterprises in least developed countries have the same obligation to the extent that other entities provide the financial and technical means required without imposing more than a minimal financial burden on the relevant least developed countries or enterprises.

10. Any entity to which an obligation in these Principles applies has flexibility in selecting the measures it uses to meet this obligation, if the measures chosen, in their totality, achieve the legally required result, as described in these Principles.

11. No Country or enterprise is relieved of its obligations under these Principles even if its contributions to total GHG emissions are small.

12. States and enterprises must comply with the obligations set out in these Principles even if relevant national law or international agreements, whether existing or later promulgated, set lower standards and, thus, would result in less reduction of GHG emissions.

## **B. Obligations of States**

13. Every above-permissible-quantum country is required to reduce the GHG-emissions within its jurisdiction or control to the permissible quantum within the shortest time feasible. This obligation in no way diminishes the obligations set out under Principles 7, 8 and 9.

14. The obligations of States are common but differentiated.

15. Least developed countries do not have a legal obligation to reduce GHG emissions at their own expense. They are subject only to the duties set out in Principles 7, 8, and 9.

16. A country with GHG emissions close to the permissible quantum is not obligated to reduce its emissions to the permissible quantum if and to the extent that doing so would create undue hardship, considering, in particular, the country's historical GHG contributions, its capabilities in terms of its wealth, its needs, its dependence on fossil fuel, and its access to renewable energy.

17. Because the permissible quantum will decrease as time progresses, a below-permissible-quantum country producing emissions close to the permissible quantum should refrain from increasing the level of its GHG emissions, unless so refraining would cause undue hardship.

18. If and to the extent that an above-permissible-quantum country has taken all steps reasonably available but nevertheless has failed to fulfil the obligations in Principle 13 or, as appropriate, Principle 15, that country must provide financial or technical means to below-permissible-quantum countries to achieve the reduction of GHG emissions that the responsible above-permissible-quantum country has failed to achieve. The receiving country must use these means for GHG-reduction purposes. Both countries have a joint responsibility to ensure that the support provided, whether financial or technical, is not used for other purposes, although such support may provide benefits in addition to GHG reduction. On the request of a State that has provided technical or financial means to another State to achieve GHG reductions, the receiving State must provide information to allow the supporting State to determine whether the support was used to achieve the intended purpose. Reductions brought about through such financial or technical support shall count as reductions for the State that has provided the financial or technical means and not as reductions for the receiving state.

19. The global reduction of GHG emissions required to ensure that the global average surface temperature increase never exceeds pre-industrial temperatures by more than

2 degrees Celsius, according to estimates based on the Precautionary Principle, may be impossible to achieve without additional reductions by above-permissible-quantum countries.

- a. If that is the case, those countries must, to the extent reasonably possible, reduce their emissions enough to ensure the global average temperature increase does not exceed the stated level.
- b. If such additional contributions do not suffice to meet the obligation to ensure that the global average surface temperature increase never exceeds pre-industrial temperature by more than 2 degrees Celsius, as set forth by Principle 6, below-permissible-quantum countries must reduce their emissions to the extent necessary to achieve that result. Unless such a country is a developed country, this obligation applies only if and to the extent that developed above-permissible-quantum countries or other entities provide the relevant country with the means to meet this obligation.

20. States must make their best efforts to bring about lawful and appropriate trade consequences for States that fail to comply with the obligations set out in these Principles.

21. States shall refrain from providing new subsidies, aid, credits, grants, guarantees, or insurance for installation of major new facilities or major expansion of existing facilities that will result in the emission of unnecessarily high or, in the given circumstances, unsustainable quantities of GHG, either within or outside their territories. For a least developed country, there may be an exception to this requirement if choosing more efficient facilities would be unduly burdensome for that country.

22. A State that fails or is reasonably likely to fail to meet its obligations shall, without prejudice to the imposition of possible consequences for such failure or impending failure, initiate or support research designed to identify and develop means to reduce GHG emissions.

23. Neither high cost nor the lack of financial means can, alone, excuse a State's failure to meet its obligations to achieve GHG reductions or constitute a defence against legal sanctions that may be imposed as a consequence of such a failure. To avoid such sanctions, a State must show excessive hardship or extraordinary circumstances beyond the State's control that have prevented the State from meeting its obligations.

24. States must regulate GHG-emissions in their jurisdictions or under their control to meet their obligations set forth in these Principles.

### **C. Procedural Obligations of States**

25. States must accept the jurisdiction of independent courts or tribunals in which the State's compliance with its obligations as set forth in these Principles can be challenged and adjudicated.

- a. States must participate in these proceedings in good faith and ensure that such proceedings are fair and efficient.
- b. In such proceedings, the State whose compliance with its obligations has been challenged must fully disclose the ways in which it has effected compliance in order to enable the court or tribunal to determine whether the State has complied with the relevant obligations and, where it is found the State has not complied, to determine the extent and nature of the State's failure to comply.

26. Each State must make available information that is necessary to enable persons within its territories to assess the risks to their lives and health that climate change poses.

#### **D. Obligations of Enterprises**

27. Enterprises must assess their facilities and property to evaluate their vulnerability to climate change; the financial effect that future climate change will have on the enterprises; and the enterprises' efforts to increase their resilience to future climate change. Enterprises must publicly disclose this information and ensure, in particular, that it is readily accessible to those who are or are likely to be directly or indirectly affected by their activities, including investors, clients, and securities regulators.

28. An enterprise whose activity includes fossil-fuel production must assess the impact that any limitations imposed on future extraction or use of fossil fuels, consistent with the "carbon budget" concept enunciated by the Intergovernmental Panel on Climate Change and others, will have on its financial situation. The enterprise must disclose this information to investors, securities regulators and the public.

29. Before building any major new facilities, enterprises must conduct environmental impact assessments. Such an assessment must include an analysis of the proposed facility's carbon footprint and ways to reduce it and the potential effects of future climate change on the proposed facility.

30. Enterprises in the banking and finance sectors should take into account the GHG effects of any projects they consider financing.

## **Annex**

These principles were prepared by an Expert Group on Global Climate Obligations, which consisted of the following members:

**Antonio Benjamin**, Justice, High Court of Justice of Brazil

**Michael Gerrard**, Andrew Sabin Professor of Professional Practice and Director, Sabin Center for Climate Change Law, Columbia University Law School

**Toon Huydecoper**, retired Advocate-General of the Netherlands Supreme Court

**Michael Kirby**, retired Justice of the High Court of Australia

**M.C. Mehta**, advocate before the Supreme Court of India

**Thomas Pogge**, Leitner Professor of Philosophy and International Affairs and founding Director, Global Justice Program, Yale University

**Qin Tianbao**, Professor of Environmental and International Law and Assistant Dean for International Affiliations, Wuhan University School of Law

**Dinah Shelton**, Manatt/Ahn Professor of International Law, George Washington University and Law School, and Commissioner and former President, Inter-American Commission on Human Rights

**James Silk**, Clinical Professor of Law, Allard K. Lowenstein International Human Rights Clinic, and Director, Orville H. Schell, Jr. Center for International Human Rights, Yale Law School

**Jessica Simor QC**, barrister, Matrix Chambers, London

**Jaap Spier**,\* Advocate-General of the Netherlands Supreme Court and Honorary Professor, Maastricht University Faculty of Law

**Elisabeth Steiner**, Judge, European Court of Human Rights;

**Philip Sutherland**, Professor, Stellenbosch University Faculty of Law

\* Rapporteur of the Expert Group on Global Climate Obligations